IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1320 OF 2004

The State of Maharashtra ...Applicant

Versus

Jaywant Tukaram Budhwale ...Respondent

Shri D.P. Adsule, A.P.P for the Applicant.

CORAM : A. S. OKA, J.

DATE : NOVEMBER 21, 2006.

P.C.:

1. Heard the learned A.P.P for the State on the prayer for grant of leave. The Respondent-accused has been acquitted of the offence punishable under section 66(1)(b) of the Bombay Prohibition Act, 1949.

2. The allegation of the prosecution is that the secret information was received by the State Excise Department that in a village one person was in possession of illicit liquor and was selling the same. The case of the prosecution is that when a constable of Excise Department proceeded to spot alongwith two panch witnesses, the Respondent-accused was found sitting alongwith one plastic can containing 5 litres illicit liquor, 30 litres illicit liquor in rubber tube and three glasses. A sample was taken in two bottles from

the said can and tube.

3. The prosecution examined only two witnesses. P.W.1, the constable of the Excise Department admitted in his cross-examination that he had not sent any fictitious customer to ascertain whether the Respondent was selling illicit liquor. The learned Judge held that there was no evidence led to show that the P.W.1 himself carried the sample to the office of Chemical Analyser at Pune.

4. More importantly the seized muddemal property was not at all produced before the court and the muddemal property remained unidentified. These are the reasons for which order of acquittal has been passed. The view taken is the possible view taken on the basis of evidence on record. No case is made out for grant of leave. Appeal is dismissed.

JUDGE